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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

In re:
TULARE LOCAL HEALTHCARE
DISTRICT dba TULARE REGIONAL
MEDICAL CENTER,
Debtor.

Case No.: 17-13797-9-B
Chapter 9
DC No.: WW-1

**HEALTHCARE CONGLOMERATE
ASSOCIATES, LLC’S OPPOSITION TO
MOTION FOR AUTHORIZATION TO
REJECT EXECUTORY CONTRACT**

Date: October 19, 2017
Time: 2:00 p.m.
Place: 2500 Tulare Street
Fresno, CA 93721
Judge: Hon. René Lastreto II

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1 **I. INTRODUCTION**

2 Healthcare Conglomerate Associates, LLC (“HCCA”) respectfully submits this opposition
3 (“Opposition”) to the motion to reject several related agreements including the Management
4 Services Agreement (“MSA”) (“Motion”) filed by the Debtor Tulare Local Healthcare District
5 dba Tulare Regional Medical Center (“District”). Notwithstanding the hurdles in opposing a
6 contract rejection motion, HCCA submits that the Motion is unfounded, and urges its denial for
7 the following reasons: 1) it is not supported by admissible evidence; and 2) the decisions of the
8 District’s board of directors (“Board”) to file the Motion and to declare a fiscal emergency were
9 imprudent, capricious and are the product of bad faith.

10 This Opposition describes the challenged agreements and the well-considered and
11 legitimate reasons that led to the District and HCCA to contract as they did in 2014. Next, it
12 discusses HCCA’s performance under the terms of the MSA and the positive results HCCA
13 achieved for the District. The Opposition then documents the ugly politics and the deliberate
14 verbal assaults and baseless disparagement of HCCA and its founder, Dr. Benny Benzeevi, that
15 resulted in a change in the membership and direction of the Board. Finally, it describes the
16 Board’s rush to falsely declare a fiscal emergency on six hours’ notice and to file this case fewer
17 than 24 hours thereafter. When the District did so, it lacked its own source of funding in hand to
18 operate the District and, at the same time, intentionally ignored a bona fide source for such
19 financing proffered to the District by HCCA.

20 Indeed, the District refused HCCA’s request to present to the Board the financing
21 opportunities it procured which would have obviated any need for this case. As a result of its
22 own reckless conduct, the Board heard only a presentation blaming HCCA and Doctor Benzeevi
23 for all the District’s problems. The Board cared only to advance the politically charged
24 environment it had fostered over a two year period to terminate the District’s relationship with
25 HCCA. In so doing, it ignored all of HCCA’s efforts to get the District on sound footing and
26 instead rushed to file for bankruptcy.

27 Fueled by its own political animus toward HCCA and Doctor Benzeevi, the District filed
28

1 the Motion a mere 10 days after the petition date. The rush to judgment is shown by the absence
2 of any pleading demonstrating why the District is eligible for chapter 9 relief or of a proposed
3 notice to creditors which would provide notice and opportunity to be heard and set a time frame
4 for any objections to eligibility or other considered positions.

5 The declarations submitted by the District consist primarily of inadmissible hearsay and
6 impermissible legal argument. Where there is an effort to state facts, more often than not they are
7 lacking veracity. HCCA's focus here is on the uncontested facts, supported by those with
8 personal knowledge, and the application of the law to those facts. We hope to establish that the
9 Court should deny the Motion and that justice is best and only served if the MSA and related
10 agreements are left undisturbed.

11 **II. BACKGROUND**

12 **A. The Parties**

13 HCCA is a California Limited Liability Company with its principal place of business in
14 Los Angeles. Its managing member is Dr. Yorai (Benny) Benzeevi, a board-certified Emergency
15 Medicine Specialist. *See* Declaration of Benny Benzeevi, M.D. ("Benzeevi Decl.") ¶ 1. The
16 District is a local healthcare district in Tulare, organized under section 32000 *et seq.* of the
17 California Health and Safety Code. The District's bylaws provide that its Board be comprised of
18 five elected directors. *Id.* at ¶ 2, Ex. 1.

19 **B. The Challenged Contracts**

20 On January 10, 2014, HCCA began managing the District on an interim basis and on
21 May 29, 2014, HCCA and the District entered into the MSA which is currently in effect. *Id.* at
22 ¶ 2, Ex. 2. Both the interim agreement and the long term agreement were approved by a 5-0 vote
23 of the Board. The District has moved to reject its four interrelated and phased contracts with
24 HCCA: (1) the MSA; the Interim Joint Operating Agreement ("IJOA"); the Joint Operating
25 Agreement ("JOA"); and the Operating Agreement ("OA"). The MSA governs the current
26 relationship of the District and HCCA.¹

27 ¹ The JOA provides for a joint venture arrangement between the District and HCCA to become effective upon the
28 settlement of the revenue bonds. The IJOA addresses the interim period prior to the effective date of the JOA. The
OA gives HCCA an option to purchase or lease District assets under specified circumstances. *Id.* at ¶ 2.

1 Under the MSA, the District appointed the HCCA as manager of the District for an initial
2 15 year term, with a renewal period of 10 years unless either party declined renewal. In the MSA,
3 the District acknowledged that the long-term nature of the MSA and its limited termination
4 provisions were a substantial inducement to HCCA in agreeing to contract with the District. *Id.*,
5 MSA, Section 2(a)-(b). Given the truncated tenures of multiple prior managers with which the
6 District found fault, HCCA was unwilling to make the long-term investment in the District
7 required under the MSA without the assurance of a long-term arrangement. *Id.* at ¶ 3, Ex. 2.

8 The MSA granted HCCA the exclusive right and responsibility to manage the Hospital,
9 clinics and other facilities of the District, “includ[ing] but not limited to financial and operating
10 systems management, preparation of proposed annual budgets, purchasing, contracting support
11 and relationship management, expansion of the Hospital and the Clinics and Other Facilities or
12 the Service offered, preparation and implementation of staffing plans, recruiting of personnel, and
13 supervision of the day-to-day operation of the Hospital, and the Clinics and other facilities.” *Id.*
14 at ¶ 4, Ex. 2, MSA, Section 3.

15 The MSA recognizes rights and various obligations of the District. In particular, the
16 District is contractually required to “furnish [HCCA] with sufficient funds to timely pay the
17 expenses relating to the District’s operations, including both operating and non-operating
18 expenses” of the hospital. *Id.* at ¶5, Ex. 2, MSA, Section 3(b)(iii). HCCA may, but is not
19 required to, advance funds to the District to fund operational costs. If HCCA advances funds, the
20 MSA provides it with contractual means to secure repayment. *Id.*

21 **C. The Financial Distress of the District Prior to the MSA**

22 The District suffered severe financial and managerial difficulties in the years leading up to
23 the engagement of HCCA as the manager of the District. Over the seven-year period prior to
24 2014, the District employed six different Chief Executive Officers and at least a half dozen Chief
25 Financial Officers. During that time, the District suffered severe and progressively worsening
26 financial losses, namely, over \$4 million in the immediately preceding six months; over \$8
27 million in the immediately preceding fiscal year; over \$16 million in the prior three fiscal years;
28

1 and a combined loss of just under \$5 million in the preceding ten-year period. The Hospital's
2 operating margin over the preceding ten years averaged a negative 0.72. *Id.* at ¶ 6.

3 The foregoing dismal history of the District and its years of prior mismanagement is
4 deeply rooted in disharmony within the Tulare medical community. When the MSA was signed,
5 Dr. Benzeevi had this understanding of the conflict within the medical community. There was a
6 powerful physician group which sought to control the Hospital and its finances which would
7 permit its members to operate the Hospital as if it were an extension of their private practices.
8 They were hamstrung by a Corporate Integrity Agreement that limited their reach within the
9 Hospital, and were further inflamed by HCCA's management, which focused on the larger
10 interests of the Hospital rather than the financial interests of these physicians. They turned
11 against HCCA after a government inspection which forced the then Board (which they saw as
12 pro-HCCA) to disaffiliate with them.

13 In response, these physicians supported the formation of the so-called Citizens for
14 Hospital Accountability ('CHA') group, and they began a steady pattern of referring their
15 patients to other hospitals in an attempt to starve the hospital and oust HCCA. The District
16 desperately needed financing to complete a scandal-rocked tower then under construction, and
17 HCCA presented a bond offering, known as Measure I, for public vote to complete the tower and
18 provide funding for the District. These physicians actively opposed Measure I as a means of
19 denying the District the much needed funding even though not completing the tower kept the
20 Hospital from meeting state seismic requirements. The measure failed and then these doctors
21 backed their own CHA candidates for the Board. These candidates became the new majority,
22 which in turn has continued the attacks on HCCA and Dr. Benzeevi.

23 The need for Measure I arose prior to HCCA's arrival. In 1994, following the
24 "Northridge Earthquake," Senate Bill 1953 mandated that California hospitals be rebuilt to meet
25 more stringent seismic guidelines. The then new Board sought voter approval in 2005 for an \$85
26 million General Obligation bond offering to bring the existing uncompleted structure into
27 compliance. The cost of the new tower at inception in 2007 was estimated at \$120 million, and a
28

1 seismic bond offering was contemplated by the District to make up the difference. The Hospital
2 project had been a financial and legal disaster. The funds raised by the District from the sale of
3 bonds much earlier were substantially exhausted by 2014; the tower was unoccupied and only
4 two thirds complete.² The tower project was mired in multiple lawsuits and unpaid claims with
5 no prospects of funding its completion. Today, the Hospital remains out of compliance with
6 Senate Bill 1953. *Id.* at ¶ 8. As a result of the de facto boycott of the District by the ousted
7 doctor group, the volume of inpatients at the Hospital was materially reduced by nearly 40% of
8 the prior volume and the volume of obstetrical deliveries was reduced by some two thirds. *Id.* at
9 ¶ 8, Ex. 3.

10 The financial condition of the District was so bad for the fiscal years ending 2012 and
11 2013, that its outside independent auditors refused to issue a “clean opinion” and instead imposed
12 a “going concern” condition to their audit report opinion. *Id.* at ¶ 9, Ex. 4. Such an opinion
13 meant that the auditors had grave concern about their client’s ability to avoid liquidation over the
14 next 12 months. *Id.*

15 When HCCA assumed its management role in 2014, the financial deterioration of the
16 District left it with less than a month’s cash for its operations. *Id.* at ¶ 10. In addition, the District
17 was operating under and subject to the five-year Corporate Integrity Agreement it had been
18 required to enter into with the Federal Office of Inspector General to redress a history of its
19 physician contracting practices. *Id.*

20 **D. The Engagement of HCCA and the Resulting Turnaround of the District**

21 In 2013, the District solicited and received bids from diverse parties, including HCCA, to
22 take over the management of all of the District’s operations, including the Hospital. In December
23 2013, the Board unanimously selected HCCA from among the bidders, and entered into an
24 interim agreement in January 2014, pending completion of the parties’ negotiations of a long term
25 agreement, which was finalized in May 2014. By the time that HCCA was selected, the Board
26 had been searching for an affiliation partner for a year. The Board members expressed to Dr.

27 _____
28 ² Prior to HCCA’s commencement of management of the Hospital in January 2014, 90% of the bond proceeds had
been exhausted and construction of the tower halted far short of completion. *Id.* at ¶ 8.

1 Benzeevi that they believed the District's long-term historical problems were due to poor
2 governance and interference by the Board in operations. *Id.* at ¶ 11.

3 One of the issues that HCCA was called upon to address as manager was the failure of the
4 physician leadership of the District to comply with peer review and other requirements for federal
5 funding. In or about January 2016, the Federal Centers for Medicare and Medicaid Services
6 (CMS) performed a survey of the Hospital's performance in past years and found a history of
7 gross negligence by the physician leadership at the Hospital and threatened to exclude the
8 Hospital from federal funding. *Id.* at ¶ 12. The Hospital receives approximately 80% of its
9 funding from governmental sources, so such a step by CMS would have caused the immediate
10 closure of the Hospital. *Id.*

11 Because of the non-compliance of the previous physician leadership and the imminent
12 threat to the Hospital's ability to qualify for federal funding, the Board disaffiliated itself from its
13 then existing medical staff and instead associated itself and the District with a new medical staff
14 organization. After this successful restructuring and under the new leadership of the new medical
15 staff, all doctors who previously worked at the Hospital retained their clinical privileges. Of note,
16 both CMS and the California Department of Public Health found that the District's plan of
17 correction – the disaffiliation with the prior medical staff and affiliation with the new medical
18 staff – properly addressed and corrected the problem and the plan of correction was accepted in its
19 entirety.³ *Id.* at ¶ 13.

20 HCCA now employs for the District approximately 525 nurses, other trained medical
21 professionals and support staff. *Id.* at ¶ 14. Prior to HCCA's arrival, pay had been frozen for
22 years at the District prior to the MSA. *Id.* To date, HCCA has given two across-the-board pay
23 raises as well as over 170 additional individual pay increases. *Id.*

24 In the three-plus years under HCCA management, the Hospital has had several dozen
25

26 ³ In the fall of 2016, the Hospital, under HCCA management, received a quality award from the California Secretary
27 of Health and Human Services for meeting or exceeding the healthy people 2020 goal for low-risk, first-birth
28 Cesarean deliveries. *Id.* at ¶ 15, Ex. 5. Other recognitions include a 2016 CALNOC Performance Excellence Award
relating to the prevention of Hospital acquired infections – MRSA total facility. *Id.* at ¶ 15, Ex. 6. In addition, the
Hospital achieved "Baby Friendly" status under a World Health Organization program recognizing optimal baby
care. *Id.* at ¶ 15.

1 months of positive net margins as confirmed by annual audits. In the first six months HCCA was
2 on board, the Hospital had a \$1.3 million net margin (compared to approximately \$4 million in
3 losses in the six months immediately prior to HCCA's arrival), and in the first full fiscal year
4 under HCCA, the Hospital recognized a net margin exceeding \$7 million. Similarly, that first full
5 fiscal year under HCCA saw a 10% operating margin. On October 26, 2016, Doctor Benzeevi
6 made a PowerPoint presentation to the Board summarizing the Hospital's tumultuous history
7 prior to HCCA, and its financial condition and success since HCCA was engaged under the MSA.
8 *Id.* at ¶ 16, Ex. 7. The positive turnaround was recognized by bond rating services and reflected
9 in their ratings. Fitch Ratings, a leading national credit rating firm, upgraded the District's
10 revenue bond ratings, and updated its outlook for the District from "negative" to "positive" and
11 noted in its August 28, 2014 ratings report the dramatic change "over the last few months"
12 (referring to the period since HCCA's arrival):

13 SIGNS OF TURNAROUND: The Stable Outlook reflects the dramatic turnaround
14 in operating and financial performance since Fitch's last review in February
15 2014....Fitch believes the positive trend over the last few months indicates
16 performance improvement plans taking hold and signal recovery. *Id.* at ¶ 16,
17 Ex. 8.

18 Fitch's positive outlook continued in its report dated August 27, 2015. Fitch reported that
19 the District's financial condition "reflects sustained evidence of operational and financial
20 turnaround and stabilization." *Id.* at ¶ 17, Ex. 9. It also stated that "[u]nder HCCA's leadership,
21 operating and financial performance improved dramatically over the last 18 months." *Id.*

22 On August 23, 2016, Fitch again reported positive results for the District and stated
23 clearly its view of the reason for the success: "[The District] has sustained the trend of strong
24 operating performance since Fitch's last rating review in August 2015. Ongoing work by the
25 management team in place since January 2014 has brought a financial turnaround, and double
26 digit operating EBITDA margins are expected to continue." *Id.* at ¶ 18, Ex. 10.

27 Similarly, on October 25, 2016, the national bond rating firm Moody's Investors Service
28 upgraded the District's outlook rating from negative to stable. *Id.* at ¶ 19, Ex. 11. Moody's
emphasized the "improved operating performance beginning in fiscal 2014, driven by a new

1 management team” – namely, HCCA. Moody’s explained in more detail, stating:

2 Beginning in fiscal 2014, a new management team affiliated with Healthcare
3 Conglomerate Associates (HCCA) has generated significantly improved financial
4 performance, growing revenues and reducing unnecessary costs. Operating
5 revenues in fiscal 2015, for example, increased by close to 16.8%, resulting in a
6 good 10.5% operating margin and marking the district’s first positive operating
margin since fiscal 2011. Previously, due largely to significant declines in patient
volume and capital project costs, the district had three consecutive years of
negative operating margins from fiscal 2012 through fiscal 2014. *Id.*

7 Moody’s also opined that the positive outlook for the District would continue due to
8 HCCA’s management:

9 The district’s new financial management team [HCCA] has succeeded in reversing
10 the district’s past trend of weak operating performance, with the district’s liquidity
and operating margins demonstrating notable improvement. We believe that the
11 current management team will remain in place over the intermediate term,
maintaining a trend of stable financial operations. *Id.*

12 Under HCCA’s management, the Hospital has shown a profit and the District has enjoyed
13 a far better than average net margin and financial stability it had not experienced in over a decade.
14 In 2015 alone, the Hospital’s financial returns were three times the national average for hospitals
15 and were greater than at any time in the prior 12 years. The market value of the Hospital
16 increased by approximately \$32 million since HCCA became its manager. *Id.* at ¶ 20, Ex. 12.

17 Kevin B. Northcraft, new Board Chair, argues that since HCCA became manager, the
18 District has suffered only disruption and turmoil. *See* Declaration of Kevin B. Northcraft (the
19 “Northcraft Decl.”) 4:16-17. As demonstrated by the foregoing financial summary, his mere
20 speculation without any foundation is simply wrong, but consistent with his disparagement
21 campaign. Moreover, in 2014, a year after HCCA came on board, two Board members that had
22 supported the HCCA agreements ran for re-election unopposed. Benzeevi Decl. ¶ 21.

23 It is true that in the last *two years* there has been disruption and turmoil, all of which has
24 been caused by Northcraft and his allies (who have been financed by others) to sow hate and
25 engage in name-calling directed to HCCA and Dr. Benzeevi. It is to those efforts we now turn
26 and discuss.

27 **E. The Dissident Attacks on HCCA and the MSA**

1 The attack by the so called CHA and its dissident physician sponsors was just the
2 beginning of an attempt to harm the District, particularly financially. *Id.* at ¶¶ 8, 22, Ex. 3. As
3 discussed above, the defeat of Measure I cost the District greatly from which it has not recovered.
4 The bankruptcy filing is the capstone to those efforts. The true function of the bankruptcy is to
5 dislodge HCCA rather than to benefit the District. This opposition group has mastered social
6 media, including its own website and Facebook, to attack its perceived enemies through
7 falsehood, innuendo and name-calling. *Id.* at ¶ 22. Since the defeat of Measure I, CHA turned its
8 focus to replacing three Board members with CHA's hand-picked candidates, who now control
9 the Board. *Id.* at ¶ 28, Ex. 20.

10 The recently seated Board members, along with CHA and others, continue with their
11 deceptive smear campaign against HCCA and Dr. Benzeevi. They engage in threats and
12 intimidation designed to set aside the MSA and cut off funding for the District, which have
13 hampered the District from paying its obligations under the MSA. *Id.* at ¶ 23. They have stated
14 they want to "throw out the current HCCA contract based on [undefined] illegal overreach." *Id.*
15 at ¶ 23, Ex. 13. For example, on July 30, 2016, Kevin Northcraft stated that, if elected to the
16 Board, he intended to "renegotiate or throw out the current HCCA contract" and to "do it 'the
17 Tulare way'—not the Southern California divisive, secretive, and machine politics way." *Id.* The
18 open threats by the new Board and its continued disparagement of the Hospital, HCCA, and the
19 MSA have poisoned the environment within which the Hospital must function to the detriment of
20 the District and community. *Id.* They have also caused irreparable harm to the Hospital, the
21 District's residents who utilize the Hospital, the Hospital staff and their families, and HCCA.⁴
22 Instances of such deception and bad faith conduct include the following actions by current Board
23 members and CHA.

24 **1. Actions of Kevin Northcraft**

25 Northcraft has reposted and published on social media a CHA post alleging that the MSA

26
27 ⁴ Calls have also been made to the office of Congressman Nunes, ostensibly from Doctor Benzeevi's wife, but which
28 he had no part in making. *Id.* at ¶ 23. Furthermore, threatening calls have been received at the Hospital, with
messages left for Doctor Benzeevi, such as "I wanted to give you a heads up, the Federal Attorney General is
coming." *Id.*

1 “brought our hospital to its current financial ruin, and thus, explains clearly how HCCA and Dr.
2 Kumar are solely responsible for the substandard care offered at our hospital today....” *Id.* at ¶
3 24, Ex. 14. During his election campaign, Northcraft made clear his desire to “amend or cancel,”
4 or in other words, “renegotiate or throw out the current HCCA contract.” *Id.* at ¶ 23, Exs. 13, 18.
5 He later did just that by turning a blind eye to much needed financing, as discussed below.

6 Northcraft posted on his Facebook page on July 28, 2017, “Dr. Benzeevi, how long did
7 you have to study to bring a hospital to the brink of bankruptcy, **fleece your employees** and
8 citizen’s [sic] of the hospital district, and give such bad care you’ve frightened away most of the
9 doctors in the area and an entire community....” *Id.* at ¶ 25, Ex. 28 (emphasis added). The
10 defamation and character assassination extends to the reckless smear by Northcraft directed to
11 existing counsel for HCCA. On or about September 11, 2017, he publicly and falsely stated: “I
12 haven’t received a phone call, text, email, in-person, anything from HCCA,” “except their
13 attorney, arguing that democracy doesn’t exist for our district.” *Id.* at ¶ 25, Ex. 16. No such
14 statement was made by any counsel to HCCA.

15 And the falsehoods run deeper than that. Except for a meeting held at Dr. Benzeevi’s
16 insistence in November of 2016 after Messrs. Northcraft and Jamaica were elected to the Board,
17 there has been no effort by Northcraft, or by the other newly-elected directors to meet with
18 HCCA or its representatives to learn about the status of the Hospital or its operations. Benzeevi
19 Decl. ¶ 26, Ex. 17. As shown by this outreach by Dr. Benzeevi, the Northcraft statement of
20 September 2017 that he has had no contact from HCCA is outright false. And, as discussed
21 further below, his testimonial claim of ignorance prior to late September 2017 of the District’s
22 financial condition is also utterly false.

23 **2. Actions of Michael Jamaica and Senovia Gutierrez**

24 Now Board member Michael Jamaica has also stated his intention to have the MSA
25 “amend[ed] or cancel[ed].” *Id.* at ¶ 27, Ex. 18. And new Board member Senovia Gutierrez has
26 stated through social media that the District needs to “get rid of HCCA.” *Id.* at ¶ 27, Ex. 19.

27 **3. Actions of CHA**

1 CHA has published several posts on Facebook, including the following:

- 2 • That the MSA “brought our hospital to its current financial ruin, and thus, explains
3 clearly how HCCA and Dr. Kumar are solely responsible for the substandard care
4 offered at our hospital today....” Actions of Citizens for Hospital Accountability
5 Group. *Id.* at ¶ 28, Ex. 20.
6 • Accusing HCCA of about to “replicate shady tactics” falsely and allegedly engaged in
7 elsewhere by Doctor Benzeevi’s brother. *Id.*
8 • Calling HCCA’s leadership “fraudulent.” *Id.*
9 • Referring to a “loan[f]raud.” *Id.*
10 • Referring to “Doctor Benzeevi’s out-and-out lies.” *Id.*
11 • Stating, “This theft and graft must come to an end.” *Id.*

12 **F. Damages Resulting From the Ongoing Attacks**

13 Leading up to the bankruptcy filing, the District has attempted to financially harm HCCA
14 in ways large and small. For example, the new Board has refused to accept a tender of defense (at
15 carrier expense) of several lawsuits filed against the replaced Board. There is no gain for the
16 District in doing this; but the harm to HCCA is palpable. And the District is harming the Hospital
17 by diverting HCCA efforts to funds to litigation instead of the protection of patients and
18 employees. *See* Declaration of Marshall B. Grossman (“Grossman Decl.”) ¶¶ 4-7. The toxic
19 body politic and cheap shots by the new District Board have taken their toll where it counts, to the
20 financial detriment of HCCA and the District itself.

21 With respect to HCCA, it (and in some cases the District) has been sued in purported
22 taxpayer lawsuits (organized by CHA) filed during the August to October 2017 time period.
23 With respect to this litigation Marshall Grossman, co-counsel to HCCA, had a number of
24 conversations with Marty Lockwood, the head of claims for third party Insurer, Beta Risk
25 Management Authority (“Beta”). Beta’s counsel, Mr. Carlo Coppo of Nossaman, informed him
26 that tenders of defense are to be made to the District and if the tender is accepted then the Beta
27 will provide the defense. *See id.* at ¶ 2. The only condition to doing so, according to these
28 lawyers, is that HCCA and the District agree that there is no right to defense or indemnity if it is

1 found that the member (here HCCA) acted with fraud, corruption or actual malice then there is no
2 coverage. *Id.* Additionally, the MSA calls for the District to provide such a defense to
3 HCCA, and such has been the practice since HCCA has been on board.
4 HCCA has agreed to this condition and communicated it to counsel for the District, Tim
5 Thompson. *Id.* at ¶ 3. The District has yet to accept the tender or agreement with the condition as
6 set by Beta, to which HCCA has already agreed. *Id.* at ¶ 4. On at least four occasions, Thompson
7 or lawyers in his firm have been asked to accept the tender but as of this date they have refused to
8 do so or provide any reason other than it is still under consideration. *Id.* at ¶ 5.

9 HCCA has incurred some \$20,000 in legal fees and costs in the defense of these lawsuits.
10 These are funds which would otherwise be available to HCCA for other purposes. *Id.* at ¶ 6.
11 Although the amount is relatively modest at this stage, the conduct of the hostile Board members
12 is consistent with their practice acting to harm HCCA and of not missing an opportunity to deny
13 HCCA funds so much needed at this point in time. *Id.* at ¶ 7.

14 Unfortunately, the heavy damages to HCCA which it has suffered at the hands of the
15 District, have been far greater in amount and with adverse consequence to the District as well.
16 Within a week after the District's bankruptcy filing on September 30, 2017, Fitch downgraded the
17 Issuer Default Rating from CC to D as a direct consequence of the chapter 9 petition. Benzeevi
18 Decl. ¶ 30, Ex. 21. Fitch also downgraded the rating on the District's existing revenue bonds
19 from CC to C, stating default appears inevitable "absent timely third-party intervention to support
20 operations and debt service payments." *Id.* Similarly, Moody's Investors Service downgraded
21 the rating for the District on October 5, 2017, and maintained a negative outlook, while noting the
22 "nonexistent cash liquidity" and "dysfunctional board relations." *Id.* at ¶ 30, Ex. 22.

23 Previously, because of the negative and destructive attacks on HCCA and self-inflicted
24 financial damage to the District about which the Board professes to care so much, the history of
25 favorable Fitch and Moody ratings for the District had turned negative. On August 9, 2017, Fitch
26 downgraded its rating on revenue bonds and the District's Issuer Default Rating from BB- to B.
27 *Id.* at ¶ 31, Ex. 23. Fitch further downgraded its rating on September 6, 2017 from B to CC
28

1 “indicating probable default risk.” *Id.* at ¶ 31, Ex. 24. The Fitch report notes the “downgrade to
2 ‘CC’ represent very high levels of credit risk, reflecting TRMC’s continued delays in executing
3 external liquidity agreements to bolster working capital and heightened political instability at the
4 TRMC board level.” *Id.* Fitch maintained the Rating Watch Negative (RWN) based on its
5 concern “over the breakdown of communication between the TRMC board and hospital
6 management that places risk on hospital operations and execution of credit agreements.” *Id.*

7 Notwithstanding the chaos and tumult brought upon the District by its own new Board
8 over the past year or more, including its failure to honor its contractual obligations to pay for the
9 running of the Hospital (including payments for money due to HCCA and to the Hospital
10 employees), HCCA has provided millions of dollars the District did not pay as provided for in the
11 MSA.⁵ *Id.* at ¶ 33, Ex. 25. The District remains in default under the terms of the MSA.⁶

12 **G. The District’s Refusal to Consider Financing Opportunities and the Rush to**
13 **File for Bankruptcy**

14 At the Board’s September 27, 2017 open session meeting, Dr. Benzeevi and HCCA Chief
15 Operating Officer Alan Germany appeared and discussed the dire cash flow issue facing the
16 Hospital, and distributed the financial statements (“Financials”) for the fourth quarter of 2017.
17 Benzeevi Decl. at ¶ 34, Ex. 26. The balance sheet portion of the Financials showed \$2,088,851 of
18 cash and \$29,236,839 of current liabilities as of end of the quarter, June 30, 2017. *Id.* The
19 Financials were previously distributed at the meeting of the Board’s Finance Committee on July
20 25, 2017. *Id.* at ¶ 34. Such financials have been publically available since shortly after that
21 meeting. The balance sheet forwarded by HCCA to the Board in April 2017 for the quarter
22 ending March 31, 2017, showed cash of \$3,622,318, current liabilities of \$3,682,258 and

23 ⁵ Suggestions made to the public and potentially in these proceedings that HCCA has been stealing the Hospital’s
24 funds are patently false. HCCA has not even been paid its management fee since August, despite having control of
25 the bank accounts, HCCA has taken a measured response with vendors by making vendor payments to critical
26 services and ensured a fluid state of operations. Northcraft’s gratuitous smear that HCCA has an “ulterior motive,”
27 “to find financing to pay themselves for services claimed to have been rendered” is inadmissible argument and utterly
28 false. Northcraft Decl. at 9:10-12. There is no ulterior motive other than for HCCA and vendors to receive what they
are owed and for the Hospital funding to remain uninterrupted. Benzeevi Decl. ¶ 33.

⁶ On September 8, 2017, HCCA provided the District with a Notice of Material Breach, and on September 19, 2017,
with a Notice of District Default. Declaration of Marc A. Levinson (“Levinson Decl.”) ¶¶ 2-3, Exs. A-B. HCCA
filed suit pursuant to the terms of MSA in Los Angeles County Superior Court (Case Number BC676133) for
declaratory relief and breach of contract.

1 accounts payable of \$15,957,708. *Id.* at ¶ 34, Ex. 27. The two financial statement packages
2 described above also were contemporaneously posted on the HCCA website. *Id.* at ¶ 34.

3 At its September 27 meeting, Dr. Benzeevi told the Board that the Hospital was out of
4 cash at present, and that HCCA had identified lenders with an interest in providing cash infusions
5 to the District to bridge the lack of liquidity crisis and enable the Hospital to remain operational.
6 *Id.* at ¶ 35. He also suggested that a special meeting be called immediately to discuss the
7 potential funding sources and opportunities he had identified. *Id.*

8 Dr. Benzeevi followed up the following evening by writing the Board requesting that,
9 pursuant to sections 1.b. or 1.c of the District bylaws, the Board conduct a special or an
10 emergency meeting on Sunday, October 1, or on Monday, October 2, at which time he would
11 present the loan options to the Board. *Id.* at ¶ 36, Ex. 28.

12 By email sent at 12:11 p.m. the next day, September 29, the Board's counsel, Tim
13 Thompson, rejected the request for as special or emergency meeting. Levinson Decl. ¶ 4, Ex. C.
14 In addition to rejecting the request that the Board be presented with loan options on October 1 or
15 2, the Thompson letter served notice on HCCA of a 6:30 p.m. emergency meeting later that day.
16 It attached an agenda which included consideration of whether to declare a fiscal emergency and
17 to authorize the filing of a chapter 9 petition. *Id.* Within two hours of receiving notice of the
18 putative emergency meeting, Grossman emailed Thompson protesting the short notice and asking
19 that the meeting be continued two days until Monday because Yom Kippur was to begin at
20 sundown that evening. *Id.* at ¶ 5, Ex. D. The email further explained that Yom Kippur was the
21 holiest of days to people of the Jewish faith (which include Dr. Benzeevi, Levinson and
22 Grossman) and that therefore none could attend the meeting. *Id.* The email also stated Grossman
23 believed that Germany, HCCA's CFO, was not in California, and could not attend either. *Id.*
24 Thompson denied the request 30 minutes later, offering to permit Germany to participate
25 telephonically. *Id.* At the Board meeting, unencumbered by any HCCA representative or
26 attorney, Thompson stated in a derisive manner that Dr. Benzeevi was "on holiday," prompting
27 laughter from the attendees. *See*, video of September 29, 2017 emergency board meeting at 42:10
28

1 minutes remaining, www.ourvalleyvoice.com/2017/09/30/tulare-regional-medical-center-to-
2 [undergo-chapter-9-bankruptcy](http://www.ourvalleyvoice.com/2017/09/30/tulare-regional-medical-center-to-). The District filed a barebones chapter 9 petition the next day,
3 Yom Kippur. Docket No. 1. Yet again, Northcraft has not been honest with the Court. Even
4 though he was fully aware of Dr. Benzeevi's ongoing efforts to provide the Board with third party
5 interest in providing financing for the District, and without any sense of irony, his testimony is
6 that "[t]he decision to file Chapter 9 came only after the District attempted alternatives that
7 would have avoided such a filing." Northcraft Decl. 7:25-28.

8 Even in the face of the bankruptcy filing, on October 4, Levinson forwarded to Riley
9 Walter, the District's bankruptcy counsel, the documentation and information concerning two
10 proposed loans that Dr. Benzeevi had sought to discuss with the Board just days earlier.
11 Levinson Decl. ¶ 6, Ex. E. The filing of this chapter 9 case and of the Motion were not in good
12 faith, were driven by a determined agenda to terminate the MSA, disseminated by code words and
13 conduct by the newly-seated Board members and by the supporting shadow of the CHA group
14 and its followers – consisting of the doctors ousted by the state. In short, the game plan of the
15 Board and its advisors has been calculated to paint the picture of a financially distressed District
16 with no means of gaining financial stability other than bankruptcy. The Board has made false
17 charges that HCCA has breached the MSA without identifying any breaches. *See* Paragraph 8 of
18 the Motion. Because there are none, the Board has created the false narrative that the District has
19 received "nothing" from HCCA to help it understand the District's business or financial
20 condition. On the one prior occasion the District made the same baseless claim, the Superior
21 Court denied its demand for documents. Grossman Decl. ¶ 8. In fact, the Board has been
22 furnished with over three years of financial statements, as well as other financial data⁷. Levinson
23 Decl. ¶¶ 7-12, Exs. F-K.

24 Unfortunately, the campaign against HCCA and Dr. Benzeevi was laced with obscene
25 personal attacks on him and his family as well as having his religious beliefs ridiculed and worse.

26 ⁷ HCCA's primary goal throughout this entire process has been to ensure patient safety and to keeping the Hospital
27 open. Due to the District's hasty decision to seek chapter 9 relief, HCCA has been left to deal with the impact on
28 Hospital operations without any cooperation from the District. HCCA is committed to continuing to provide
documents to all who are entitled to have them but must place patient safety first and foremost and provide payments
to its approximately 525 hospital employees.

1 The unabashed intention of the false facts campaign that began long before the petition date was
2 to drive or scare Dr. Benzeevi and HCCA out of the community and to terminate the MSA. At
3 the same time, the District owes HCCA in excess of \$7 million for direct advances HCCA made
4 on behalf of the District even though it was under no obligation to do so.

5 An atmosphere has been fictitiously created in which the non-breaching party is the evil
6 doer and the breaching party is a victim without recourse other than Chapter 9. The atmosphere
7 was fueled by a not so subtle reference to Dr. Benzeevi's Jewish faith, including an appalling
8 cartoon throwback to the Nazi era showing a grotesque male with distorted facial features
9 surrounded by huge amounts of money while sitting on top of helpless others. Benzeevi Decl. ¶
10 28, Ex. 20.

11 **III. ANALYSIS**

12 **A. Standard For Rejection of Executory Contracts**

13 A chapter 9 debtor, like a trustee, "subject to the court's approval, may assume or reject
14 any executory contract or unexpired lease." 11 U.S.C. § 365(a). "Section 365(a) gives debtors
15 wide latitude in deciding whether to assume or reject a contract" *In re Pomona Valley Med.*
16 *Group, Inc.*, 476 F.3d 665, 672 (9th Cir. 2007). "[I]n evaluating the rejection [or assumption]
17 decision, the bankruptcy court should presume that the debtor-in-possession acted prudently, on
18 an informed basis, in good faith, and in the honest belief that the action taken was in the best
19 interests of the bankruptcy estate." *Id.*

20 Notwithstanding this presumption, rejection of a contract is not free from judicial
21 examination. This is a textbook case where that oversight proves to be of great importance. A
22 request for authority to reject an unexpired lease should be denied if the debtor's decision to reject
23 "is so manifestly unreasonable that it could not be based on sound business judgment, but only on
24 bad faith, or whim or caprice." *Id.* (quoting *Lubrizol Ents., Inc. v. Richmond Metal Finishers,*
25 *Inc.*, 756 F.2d 1043, 1047 (4th Cir. 1985)). This standard is commonly referred to the
26 "Deferential Business Judgment" rule. *In re Hertz*, 536 B.R. 434, 442 (Bankr. C.D. Cal 2015).

27 Another consideration guiding courts in deciding whether a debtor has properly exercised
28

1 its business judgment is “whether rejection would benefit the general unsecured creditors.” *Id.* at
2 442 (quoting *In re Chi-Feng Huang*, 23 B.R. 798, 801). Rejection should not be allowed where
3 the primary beneficiaries are the debtors, not the creditors. *Ibid.* “[T]he threshold requirement
4 and burden of the [debtor] is to produce credible evidence that [the] decision to assume or reject
5 would benefit the estate or result in a successful reorganization.” *In re Prestige Motorcar*
6 *Gallery, Inc.*, 456 B.R. 541 (Bankr. N.D. Fla. 2011) (quoting *Pomona*, 476 F.3d at 670). Once
7 the Debtor meets its burden of showing that its rejection of an executory contract will benefit the
8 estate, the non-debtor party bears the burden of proving that the debtor’s decision derives from
9 bad faith, whim, or caprice. *In re Nickels Midway Pier, LLC*, 341 B.R. 486, 493 (Bankr. D.N.J.
10 2006).

11 **1. The Motion Lacks Evidentiary Support, and it and the Supporting**
12 **Declarations are False in Material Respects**

13 Quite obviously, the Court should insist on and only consider admissible evidence in
14 passing judgment on this Motion. Here, as demonstrated in the following discussion, the
15 Northcraft declaration is inadmissible in material respects. Regrettably, as shown above and
16 further discussed below, it is also either false or laced with half-truths throughout. Moreover,
17 much of it is legal argument. This misconduct and failure to comply with basic principles where
18 testimony is proffered by declaration, add impetus for a decision denying the Motion.⁸

19 In the virtually evidence-free Declaration of Riley Walter, the District argues that HCCA
20 has threatened to terminate or suspend all employees of the hospital which “will imperil health
21 and safety of patients and results in a cessation of hospital operations.” Declaration of Riley
22 Walter (the “Walter Decl.”) 2:8-11. The truth is that it is only HCCA that is protecting the
23 patients and the Hospital operations by advancing the funds to do so even in the face of the
24 District’s failure to pay for such expenses as required by the MSA. HCCA has provided those
25 funds out of its own pocket for well over a year, even though it had no obligation to do so and
26 now has the absolute legal right to decline to continue to do so when the responsible party, here

27 _____
28 ⁸ Concurrently with its opposition, HCCA has filed extensive evidentiary objections and motions to strike specific portions of the Northcraft and Gianello declarations.

1 the District, disparages HCCA at every turn, even as the District continues to breach the MSA.
2 No patients have been compromised, and that will not change under HCCA's watch. Moreover,
3 as discussed above, the District's irrational conduct includes refusing to discuss or consider the
4 multimillion dollar financing opportunity for the District procured by HCCA. Benzeevi Decl. ¶¶
5 35-37, Ex. 28; Levinson Decl. ¶ 4, Ex. C.

6 The Motion is a disjointed summary of arguments not grounded in fact and devoid of
7 evidentiary support. One example is the claim that the MSA is "oppressive ... unconscionable
8 and unlawful" and other pejorative labels. Motion at 2:23-27. As demonstrated above, HCCA
9 was awarded the MSA and related agreements in the context of competitive meetings with a
10 number of companies vying for the contract. The contract was heavily negotiated by the parties
11 over the course of five months, and each party was represented by well-regarded and respected
12 counsel. At the time, the District wanted major control to pass to HCCA and that is what the
13 MSA provides. The fact that Northcraft believes that he could have negotiated a more favorable
14 agreement is of no legal consequence. *See* Northcraft Decl. 3:1-6.

15 It is suggested that "[s]ince execution of the contract," each of the parties claims the other
16 is in breach of the contract. *Id.* at 3:7-9. This is not true. The rupture in the relationship started
17 with the recent smearing of HCCA to defeat a proposed bond sale and to win election to the
18 Board and not earlier. The breaches by the District are legion. *See* Levinson Decl. ¶ 3, Ex. B.
19 There has never been a District claim of HCCA breach of the MSA.⁹ There is a claim by District
20 counsel that HCCA has been slow to produce a burdensome amount of documents and data. The
21 record is clear that, even as it has been under relentless attack in the political realm as shown
22 below, HCCA has made ongoing major document productions to counsel for the District.
23 Moreover, the Superior Court recently denied a District motion to compel production of
24 documents. Grossman Decl., ¶ 8.

25 _____
26 ⁹ Pursuant to Section 10(c)(i) of the MSA, if the District claims HCCA is in material breach of the MSA, the District
27 must provide written notice of such breach to HCCA with at least 60 days to cure. Pursuant to Section 10(e)(i) of the
28 MSA, "[i]n the event either party to this Agreement deems the other party to be in default of its obligations
hereunder, then said party shall be required to provide notice of the alleged default to the other party, which notice
shall contain a detailed description of the alleged default." The District has not provided HCCA with a notice under
either section of the MSA.

1 The Motion at paragraph 8 makes much of HCCA's inability to fund payroll. The MSA
2 obligates the District to "furnish [HCCA] with sufficient funds to timely pay the expenses relating
3 to the Operations" which it has failed to do so to the tune of over \$7 million. *See Benzeevi Decl.*,
4 ¶ 5, Ex. 2, MSA, Section 3(b)(iii). Northcraft also claims that "[a]t the present time the board of
5 directors is completely in the dark in terms of what is going on in the hospital, including
6 revenues, debts, patient counts, etc. No material financial information has been provided to us
7 about the condition of the Hospital." Northcraft Decl. at 10:4-7. Again, not true. As noted
8 earlier in the Opposition, financial information regarding the Hospital has been presented at
9 various Board and/or Finance Committee meetings, and much is available on the District's
10 website. Separately, HCCA's counsel provided counsel for the Board with the following
11 financial information on September 12, 2017, and September 26-28, 2017:

- 12 • January – December 2015 monthly financials, including balance sheets, statement of
13 revenues, long-term debt service coverage ratio computation and continuing disclosure
14 reports
- 15 • January – September 2016 monthly financials, including balance sheets, statement of
16 revenues, long-term debt service coverage ratio computation and continuing disclosure
17 reports
- 18 • Financials for October – December 2016, which were reported on a quarterly, rather
19 than monthly basis
- 20 • Financials from first and second quarters of 2017, including statement of revenue and
21 expenses through June 30, 2017, previously distributed at the July 25, 2017 Board
22 Finance Committee meeting
- 23 • July 25, 2017 Finance Committee meeting agenda
- 24 • July 25, 2017 Finance Committee meeting report
- 25 • Proposed fiscal year 2018 budget
- 26 • Documents related to two loan proposals negotiated by HCCA.

27 Levinson Decl. ¶¶ 6-12, Exs. E-K.
28

1 In addition, Walter was provided with a complete list of creditors with names, addresses
2 and amounts, along with a list of the District's bank accounts and available balances prior to the
3 October 12, 2017 initial hearing on the Motion ("Initial Hearing").

4 The next day, HCCA provided Walter with a detailed accounts receivable reports along
5 with aging histories. As agreed and as ordered at the Initial Hearing, HCCA will provide further
6 documents to the District no later than the October 19 continued hearing on the Motion.

7 **2. The District has Not Met Its Burden of Proof in Establishing that**
8 **Rejection Would Benefit the Unsecured Creditors or Result in a**
9 **Successful Reorganization**

10 The District has offered no admissible evidence that establishes that rejection of the MSA
11 would benefit the unsecured creditors in this case or lead to a successful adjustment of the
12 District's debt. The District has not provided any proof of who will manage the Hospital if the
13 MSA were to be rejected. Any references to HFS assuming control over hospital operations if
14 HCCA is terminated are inadmissible hearsay (Northcraft Decl. 12:11-13). Moreover, any claim
15 that HFS constitutes a solution for the District is contradicted by the statements made in the
16 Gianello declaration, in which the declarant specifically states that HFS "[has] no intentions as
17 serving as the long term manager of the Debtor. "Gianello Decl. 2:10-11.

18 With regard to obtaining financing, the District once again offers no suggestion, let alone
19 admissible evidence, as to the availability of financing for the District other than the hearsay and
20 unsupported Northcraft statements that admit that the "terms are still being negotiated."
21 Northcraft Decl., 12:12-16.

22 All of the 525 plus employees at the Hospital are HCCA employees. The District offers
23 no clue as to how it will staff the Hospital if the MSA is rejected. Finally, rejection of the MSA
24 will result in its breach and will give rise to a claim for damages in excess of \$15,000,000,
25 including a termination fee which will add several million dollars to the pool of general unsecured
26 claims and dilute any distribution to the general unsecured creditors. Benzeevi Decl. ¶ 2, Ex. 2,
27 MSA Section 10(b). Without the benefit of HCCA's operational knowledge of the Hospital, no
28 firm commitment for a replacement hospital manager, the potential loss of some, many or most of

1 the approximately 525 HCCA employees and an uncertain future with regard to the District's
2 future financing abilities, simply keeping the Hospital open, let alone confirming a successful
3 plan for the adjustment of the District's debts, with be difficult if not impossible.

4 **B. The District's Decision to Reject the MSA is Manifestly Unreasonable and is**
5 **Not Based Upon the Debtor's *Sound* Business Judgment**

6 Chapter 9 enables an insolvent municipality to restructure its debts. It does not create
7 revenue. Yet the "emergency" bankruptcy authorization resolution that the Board passed during a
8 meeting conducted on six hours' notice was grounded on its lack of cash and impliedly the lack of
9 any ability to obtain cash to continue in operations. There were no pending foreclosures and no
10 creditors were threatening to exercise self-help. Nevertheless, this case was filed on a Saturday,
11 fewer than 24 hours after the Board meeting was concluded. Not surprisingly, the Hospital
12 remains unable to pay its operating costs as they came due. All members of the Hospital staff are
13 employed by HCCA, and have been paid by HCCA to the extent that District funds are available.
14 The MSA does not require HCCA to advance such funds. The Motion seeks to replace HCCA
15 without any guarantee of a source of funds to keep the Hospital open. Without the ability to staff
16 the Hospital, it will close, which only would benefit other hospitals in the area. A legitimate area
17 of inquiry here is whether any of them have helped finance the campaign against HCCA or Dr.
18 Benzeevi; an expensive campaign presumably not financed by any of the newly-elected Board
19 members. Rejecting the MSA will make the survival of the Hospital problematic, all to the
20 detriment of the Debtor, its creditors and the community.

21 **C. The District's Decision to Reject the MSA Was Driven by its Bad Faith**

22 The "emergency" cited by the Debtor for the chapter 9 filing was self-inflicted. As
23 discussed above, HCCA attempted to provide the District with financing proposals to remedy the
24 District's illiquidity, and that might have averted bankruptcy. There is no guarantee, of course,
25 that the loans would have been the ultimate solution, but it was bad faith not to hear and seriously
26 consider them. Rather, the District, determined to destroy the MSA via rejection under a new
27 Board, arbitrarily, capriciously and whimsically elected to ignore HCCA's financing
28

1 opportunities and instead filed chapter 9 with no demonstrated ability to fund operations with or
2 without HCCA.

3 The District has not filed a pleading, let alone a pleading supported by any evidence, that
4 would enable the Court to determine whether the District is eligible for chapter 9 relief (as
5 required by Bankruptcy Code §§ 109(c) and 921(c)). Due to the publication requirements of
6 Bankruptcy Code § 923, this Court will be unable to conduct a hearing on HCCA's impending
7 objection to the District's eligibility pleadings – assuming that they will be filed someday – until
8 December, if then. But the Debtor has filed one set of pleadings in an attempt to reject the MSA
9 on much shortened notice. This, months before the Court determines whether the District is
10 entitled to any bankruptcy relief. HCCA submits that the Motion, like the so-called emergency
11 chapter 9 filing, is in bad faith.

12 **IV. CONCLUSION**

13 In light of the foregoing, HCCA requests that the Motion be denied.

14
15 Date: October 17, 2017

ORRICK, HERRINGTON & SUTCLIFFE LLP
and
KLEIN, DENATALE, GOLDNER, COOPER,
ROSENLIB & KIMBALL LLP

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